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FILE ONLY

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## Generals vs. reporters

**T**HE outcome of the two trials, of Gen. Ariel Sharon of Israel, and Gen. William C. Westmoreland of the United States, is a disappointment to those who believe that the American press is irresponsible too much of the time and ought to be curbed by law.

In the Sharon case, the press (Time magazine) apparently made a factual mistake. It asserted that the official Israeli government report on the Sabra and Shatila massacres contained a passage saying that General Sharon had mentioned to the Maronite Christian leaders the possibility that they would want revenge for the assassination of their fallen leader, Bashir Gemayel.

Time was unable to prove that such a passage was in the unpublished portions of the official Israeli government report. Time's reporter who had provided the information from a confidential source says he still believes it was true. He could not prove it. The jury concluded that Time had acted in good faith, not in malice.

We will never know what the jury might have concluded in the Westmoreland case. The general's suit against CBS was withdrawn. He had charged that CBS had libeled him and his staff by accusing them of having engaged in a "conspiracy" to show progress in the Vietnam war by understating the size and capabilities of Vietnam forces.

I feel myself that CBS was reaching too far in alleging a "conspiracy." I do not believe that there was on the part of General Westmoreland and his staff a conscious and deliberate attempt to deceive the President in Washington and American public opinion. And I do not believe that the story of the war would have been different had General Westmoreland sent to Washington the higher estimates of enemy strength which had been submitted to him by his intelligence officers.

The issue turns on whether the higher estimates (which subsequent events proved to be correct) would have made a difference in the war. I doubt that anything would have shaken President Lyndon Johnson's war resolve short of the Tet offensive, which did make

the difference. Would anyone have been more alert in Vietnam on the day of Tet had the higher figures gone to Washington?

The general's staff in Saigon knew of the higher estimates. Sending them to Washington would not have raised the level of alert in Saigon.

No. It is a reasonable probability that sending a more accurate enemy strength estimate to Washington would have irritated the President, but not shaken his resolve or changed history. Tet did.

But testimony in the trial established that General Westmoreland ordered the higher estimate to be deleted from reports to Washington.

CBS editorialized from that fact. I think its editorial inferred too much effect from the fact. But if CBS was in error, it was an error of editorial judgment.

So what have we in these two cases? In the Sharon case the general, in effect, was asking the jury to declare that the American press can be punished for making a factual mistake. In the Westmoreland case the general was asking the jury to declare that the American press can be punished for making a mistake in editorial judgment.

Both those attempts have failed. The Sharon case confirms the freedom of the American press to print what it believes, even if mistaken. The Westmoreland case (by withdrawal of the suit) confirms the freedom of the American press (or news broadcasts) to draw what may be unfair editorial conclusions.

But let us be clear about something. This means that the American press, because of the First Amendment, is as free from government control as any press in the world. But it does not mean that the American press is above the law or outside the law. Time could have been punished, as could anyone else, if found guilty of malicious libel.

The American press is free to make honest mistakes, free to criticize the government, free to make mistaken editorial judgments. The outcome of the two trials confirmed those freedoms. But the American press is not free to commit a crime. Malicious libel is a crime. Had either Time or CBS been found guilty of malice, it would have been punished.